

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THIERNO BAH and MOHAMED DIALLO,

Plaintiffs,

-v-

No. 08 Civ. 9380 (LTS)(AJP)

SHOE MANIA, INC., et al.,

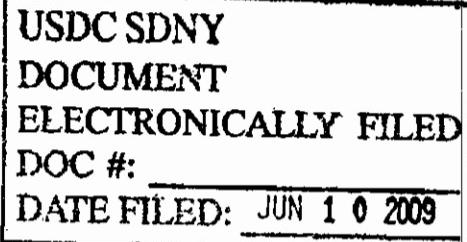
Defendants.

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ORDER

Pursuant to the discussion at the May 29, 2009, pre-trial conference, Plaintiffs have submitted follow-up affidavits setting forth their bases for believing that stockpersons and/or warehousemen working at the Shoe Mania facilities located at 853 Broadway, 331 Madison Avenue, 30 East 14th Street and 11 West 34th Street were not paid adequately for overtime work. The Court finds these submissions sufficient to satisfy the Plaintiffs' "minimal" burden at this stage with respect to collective action certification. Accordingly, Defendants are ordered to provide to Plaintiffs the names, last known addresses, telephone numbers and private email addresses of stockpersons and warehousemen who worked, at any time in the last three years, in the Shoe Mania facilities located at 853 Broadway, 331 Madison Avenue, 30 East 14th Street and 11 West 34th Street, no later than June 17, 2009.

Attached to this order is the Court's markup of Plaintiff's proposed notice, reflecting the above ruling, as well as the rulings in the Court's May 13, 2009, Memorandum Order and Opinion and the rulings at the May 29, 2009, pre-trial conference. Plaintiffs are authorized to issue this opt-in notice, with the changes noted, to potential plaintiffs.



As discussed at the pre-trial conference, should Plaintiffs wish to distribute an opt-in notice in French and/or Spanish, Plaintiffs must provide proposed translations to Defendants for review, with courtesy copies provided for Chambers. Defendants may thereafter submit any objections to the proposed translations to the Court. If Defendants do not submit any objections to the proposed translations within seven days of Defendants' receipt of the proposed translations, Plaintiffs may distribute the opt-in notices in accordance with the proposed translations.

SO ORDERED.

Dated: New York, New York
June 10, 2009



LAURA TAYLOR SWAIN
United States District Judge

THIS NOTICE HAS BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THIS IS NOT A SOLICITATION FROM A LAWYER

PLEASE READ THIS NOTICE

Dear Sir or Madam:

(Stockperson and/or warehouseman)

If you are or were an hourly or overtime non-exempt employee at a "Shoe Mania" retail store, and you are currently employed in that position or were employed in that position within three years prior to the date of this notice, and you did not receive overtime compensation, you may be entitled to wages that you are lawfully owed.

a Shoe Mania store located at 853 Broadway,
331 Madison Avenue,
30 East 14th Street and/or
11 West 34th Street

[Specifying address & pertinent facilities]
[locations]

1. WHY DID I GET THIS NOTICE?

The purpose of this legal notice is to inform you that a lawsuit has been filed against Shoe Mania, Inc., and affiliated entities (hereinafter, "Shoe Mania") for unpaid overtime wages, and that you may be eligible to join the lawsuit.

The Court has authorized this notice so that other individuals who may be "similarly situated" to the original plaintiff can become aware of their rights and join the lawsuit if not at their choice.

This notice advises you about how your rights may be affected by this lawsuit and how you may participate in this lawsuit, if you decide you wish to do so.

2. WHAT IS THE LAWSUIT ABOUT?

Plaintiff Thierno Bah, a former Shoe Mania stockperson, filed the lawsuit against "Shoe Mania" on October 31, 2008. He alleges that Shoe Mania violated the Federal Fair Labor Standards Act by not paying certain eligible Shoe Mania employees overtime compensation at the rate of time and one-half for all hours worked in excess of 40 hours in a work week. Defendant Shoe Mania disagrees, and claims it properly paid its employees all wages they were owed. The lawsuit is captioned *Thierno Bah v. Shoe Mania, Inc., et al.*, No. 08-Civ-9380.

3. WHO MAY JOIN THE LAWSUIT?

listed in the opening paragraph of this Notice) or were employed (stockperson and/or warehouseman) within three years prior to the date of this notice, *and you did not receive full compensation for overtime work*)

If you are currently employed as an overtime non-exempt employee at any Shoe Mania retail location, or were employed as a overtime non-exempt employee at any Shoe Mania retail location within three years prior to the date of this notice, then you are eligible to join this lawsuit. Joining this lawsuit does not mean that you are automatically entitled to any money, only that the lawyers who represent you will try and obtain money for you. The Court may determine further rights, including the right for the case to continue on a consolidated basis.

4. HOW DO I JOIN?

Meet the eligibility requirements described in paragraph 3

If you fit within the definition of the class members described above, you may join this lawsuit in either of two ways:

(read and complete)

(Submit it to Plaintiffs)

- (1) You may join this lawsuit by reading, completing the attached form entitled, "Consent to Become Party Plaintiff" and returning to class counsel at the addresses listed below. The return envelope is pre-addressed and postage-paid for your convenience. Should the enclosed Consent form be lost or misplaced, forms are available at <http://www.mlassociates.com/shoemaniacase> or you may contact class counsel at the below address:

Mark Lubelsky, Esq.
Mark L. Lubelsky & Associates
123 West 18th Street, 8th Floor
New York, New York 10011

Phone: (212) 242-7480
Fax: (646) 619-4631
Email: mark@mlassociates.com
dgottlieb@mlassociates.com
shoemaniacase@mlassociates.com

Should the enclosed Consent form be lost or misplaced, forms are available by contacting Plaintiff's Counsel at the below address, telephone number or e-mail address:

agreed to hire Plaintiff's counsel to represent you. If you choose this option, you must

Insert from P.3

The Consent form must be sent to class counsel in sufficient time to have plaintiffs' counsel file it with the Court on or before [insert date that is 60 days from the date of notice mailing]. If you fail to return the "Consent to Become Party Plaintiff" form to class counsel in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate as a plaintiff in this lawsuit.

Plaintiff's

submit

-OR-

- (2) You may also join the lawsuit by retaining another lawyer of your own choosing. If you do so, your attorney must file an "opt-in" consent form with

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(Clerk of)

the Court on or before [insert date that is 60 days from date of notice mailing].
The address of the Court is:

United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312
Attn: Clerk of the Court

The Clerk of the Court cannot give legal advice about this lawsuit.

ask the Court
to award
them

5. WHAT HAPPENS IF I JOIN?

If you choose to join in this lawsuit, you will be bound by the Judgment in this lawsuit, whether it is favorable or unfavorable to you.

Plaintiff's

Submitting

If you join the lawsuit by signing and returning the "Consent to Become Party Plaintiff" form, the lawyers for the class will represent you. These lawyers are representing the class on a contingency basis. They will not get paid unless they obtain money for you and the class. If there is a recovery, the class lawyers will receive a part of any settlement obtained or money judgment obtained in favor of all members of the class. The amount they will get paid will be determined by the Court.

attached to this Notice

who originally filed this lawsuit

6. AND IF I DO NOT JOIN?

other plaintiffs who have joined this action

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the lawsuit in any way and will not be bound or affected by the result of the lawsuit (whether favorable or unfavorable).

If you decide not to join the lawsuit, you retain your right to bring a similar lawsuit on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years.

7. NO RETALIATION PERMITTED

Federal law prohibits the defendant from discharging you from your position of employment or in any other manner penalizing you or discriminating against you because you received this notice or join this lawsuit, or because you in any other way exercise your rights under the Fair Labor Standards Act.

8. FURTHER INFORMATION

If you have joined the lawsuit by signing the "Consent to Become Party Plaintiff" form, the lawyers who originally filed this lawsuit will represent you in connection with depositions, other discovery

If you join this lawsuit, you may be asked to appear for depositions, respond to written discovery, and/or testify at trial. You may also be liable for litigation costs associated with this lawsuit if the lawsuit is unsuccessful.

Additional information can be obtained from the lawyers listed in Paragraph 4 or from the website also listed in Paragraph 4.

You may also examine the Court file in this case, in person, at the U.S. Courthouse, 500 Pearl Street, New York, NY 10007-1312.

Other than in-person requests to examine the file at the Clerk's Office, no inquiries concerning this case should be directed to the Court or to the Clerk of the Court.

DATED: _____, 2009

THIS NOTICE HAS BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE COURT TAKES NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE DEFENDANT'S DEFENSES OR COUNTERCLAIMS.

You may also contact Defendants' lawyer, Neil H. Greenberg, Sr., Esq., for more information, at the below address:

Neil H. Greenberg, Sr., Esq.
Neil H. Greenberg & Associates, P.C.
900 Merchants Concourse, Suite 214
Westbury, NY 11590
Phone: (516) 228-5100
Fax: (516) 228-5106
Email: denise@nhalw.com

CONSENT TO BECOME PARTY PLAINTIFF

I consent to be a party plaintiff in the above-captioned lawsuit in order to seek redress for violations of the Fair Labor Standards Act, 29 U.S.C. § 216(b), as set forth in the Complaint.

I hereby designate Mark L. Lubelsky & Associates to represent me in this suit.

Signature

Print Name

Street Address

Apartment/Floor/Suite Number

City, State and Zip Code